IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 516 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI RAMSINGBHAI PATELIA

Versus

BODIBEN D/O. MANSINGBHAI BHAVABHAI

Appearance:

1. Criminal Revision Application No. 516 of 1997

MR PJ KANABAR for Petitioner No. 1

MR UM SHASTRI for Respondents No. 1-2

MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 04/10/2001

ORAL JUDGEMENT

#. This Revision Application is filed by husband being aggrieved by the judgment and order of learned Additional Sessions Judge, Panchmahal at Godhra in Criminal Revision

Application No.66/1995. The judgment was delivered on 19.1997 whereby the order of learned Judicial Magistrate (First Class) at Godhra in Criminal Misc. Application No.389/1993 dated 22.6.1995 rejecting the application of present respondents under Section -125 of the Criminal Procedure Code was set-aside and Criminal Revision Application No.66/1995 was allowed by the learned Sessions Judge, and the present petitioner was ordered to pay the maintenance of Rs.400/- for respondent No.1 and Rs.300/- for respondent No.2. The present respondent No.1 Bodiben filed above Misc. Criminal Application No.389/1993 in the Court of Judicial Magistrate at Godhra under Section 125 of the Criminal Procedure Code for the maintenance for herself and her minor son - Arvind against the present petitioner - husband and the same came to be rejected by the learned Magistrate on the ground that the applicant - Bodiben could not establish relationship of marriage between the parties and, hence, Bodiben - wife filed Revision Application before the learned Additional Sessions Judge being Criminal Revision Application No.66/1995, and as said above, vide order dated 1.9.1997, the order of learned Magistrate was set aside and the Criminal Misc. Application No.389/1993 was granted in favour of the wife and, hence, this Revision Application.

#. Learned Additional Sessions Judge relied upon the deposition of the applicant and came to the conclusion that the Magistrate committed error in coming to the conclusion that there was no marriage tie between the parties because no documentary evidence or corroborating oral evidence or independent evidence was adduced by the applicant. On this ground the Revision Application came to be allowed.

#. Learned advocate Mr.P.J.Kanabar, for the petitioner was heard. While learned advocate Mr.U.M.Shastri, for the respondent Nos.1 and 2 is not present. Learned APP Mr.B.Y.Mankad, for the respondent No.3 - State was heard.

#. Learned advocate Mr.Kanabar contended that the learned Additional Sessions Judge has attempted to reappreciate the evidence which is not permissible because in revisional power once the evidence is recorded by the Magistrate and on facts the Magistrate has come to the conclusion placing reliance on evidence, interference in reappreciating the same evidence is not warranting. It is contended that the witnesses were examined by the Magistrate and it was the Court, who can assess the evidence properly. It is contended that what is not believed by the learned Magistrate, has been believed by

the learned Additional Sessions Judge. It is an established law, as per the contention of the learned advocate, that when factum of marriage is in dispute the applicant must prove it. In this case the applicant has failed to prove the factum of marriage and there were no grounds at all for the Additional Sessions Judge to interfere in the order of learned Magistrate, nor the Additional Sessions Judge came to the conclusion that the order of learned Judicial Magistrate was perverse so as to interfere with the order. On this ground, it is urged that the Revision Application be allowed and the order impugned be quashed.

#. Having heard learned advocate for the petitioner and having gone through the record available, true it is that ordinarily no interference is required under the revisional jurisdiction unless the order impugned is perverse. Learned advocate for the applicant has relied upon the case of this Court in the matter of Ramaben Wf/o Amratlal Dayalji Patel Vs. State of Gujarat, as reported in 1993 (1) GLH 291 wherein it is established that revisional Court cannot reappreciate the evidence unless a strong case is made out that the findings recorded by the lower court are perverse. While going through the facts of this case, it clearly transpires that the order of learned Magistrate is not only perverse but has caused miscarriage of justice. True it is that, when the factum of marriage is dispute the applicant must prove it. The learned Magistrate has clearly erred in not taking into consideration the circumstances attending the case which he was duty bound to take. It is clear that the parties are coming from the backward area of Panchmahal, Godhra district. The applicant is illiterate. The question of producing any documentary evidence as has been listed by the learned Magistrate in his judgment and on producing those documents only if the marriage is said to have been proved then it would amount to denial of justice to the applicant. In such case when a Hindu wife coming from the backward are, illiterate, steps in the witness box and states on oath that she is married to opponent there is no reason at all to discard her evidence. The evidence of the applicant on oath in such circumstances would be sufficient to dislodge the burden if at all is fixed upon the applicant to prove marriage. Not only that, in such circumstances once the applicant wife states on oath that she is married the opponent then certainly the heavy burden lies upon the opponent to prove that there was no marriage. The learned Magistrate, however, could not take this facts into consideration and instead observed that no documentary evidence to prove marriage was produced by the applicant.

The learned Sessions Judge has not reappreciated the evidence but has clearly observed that mode of appreciating the evidence by the learned Magistrate was not correct. It is not necessary for the revisional Court to observe in so many words that the order is perverse or requires interference. Observation of the learned Additional Sessions Judge to the extent that the factum of marriage could have been held to be proved by the learned Magistrate on a deposition on oath by the applicant is sufficient to denote that the order of Magistrate is perverse and requires interference in the revisional jurisdiction. There is no reason at all for a Hindu wife to depose on oath against any third party that he was the person whom she had married. The appreciation of the evidence must be an appreciation of a reasonable standard of a prudent man. A wife claiming maintenance under Section 125 cannot be placed to a strict proof of marriage, which learned Judge attempted to do and application of the present respondent and her minor son was refused by the learned Magistrate only on the ground that the factum of marriage was not proved. The opponent took a stand that because of some theft case, false application was filed against him. On the contrary, this is not sufficient evidence to discharge the burden which is shifted upon the opponent, that the applicant and opponent were legally married husband and wife. There cannot be in these circumstances, any other evidence then the say of the applicant on oath that she was a legally married wife of the opponent and had a issue during that wedlock. Learned advocate for the applicant has further relied upon a decision of this Court, as reported in 1991 (2) GLH 94 in the matter of Sulochanaben W/o Hiralal Hariali Vs. Pandurang Tolaram Khatri, wherein this Court observed that the pre-requisite condition for claiming maintenance is lawfully wedlock between the parties. It was also observed that the learned Additional Sessions Judge has reached to the conclusion that there was no valid marriage between the parties. It was also held that even if the marriage is proved then the same would be void on account of man having a spouse living and on those facts of the case this Court observed as above, but, this decision is not helpful to the present petitioner. There cannot be combat with the principle that pre-requisite condition to claim maintenance under Section 125 of the Criminal Procedure Code is legal wedlock between the parties. How this wedlock is proved is depending upon the facts of the case. In this particular case, the learned Additional Sessions Judge was correct to come to the conclusion that by the deposition of the applicant the wedlock was proved and learned Judge ought not to have rejected application of

the wife on that ground. In this view of the matter, I cannot agree with the submissions made on behalf of the petitioner and, therefore, following order;

This Revision Application stands dismissed. Rule is discharged.

(J.R. VORA, J.)

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